

E. T. Sunup vs C. A. N. S. S. Employees Assocn. & Anr on 13 October, 2004

Equivalent citations: AIR 2005 SUPREME COURT 115, 2004 (8) SCC 683, 2004 AIR SCW 6354, 2004 (10) SRJ 543, (2005) 2 JCR 155 (SC), 2004 (8) SCALE 706, 2004 (6) SLT 412, 2005 (2) SERVLJ 33 SC, 2005 ALL MR(CRI) 841, (2004) 9 JT 277 (SC), 2004 (9) JT 277, (2005) 25 ALLINDCAS 341 (SC), (2004) 8 SUPREME 298, (2004) 8 SCALE 706, (2005) 1 ESC 77, (2005) 1 LABLJ 243, (2005) 1 LAB LN 29, (2004) 4 RECCRIR 927, (2005) 1 WLC(SC)CVL 226, (2004) 4 CURCC 295, (2004) 24 INDLD 340, (2004) 107 FJR 885, (2004) 29 OCR 756, (2004) 4 ALL WC 3734, (2004) 103 FACLR 711

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Bench: B.N. Agrawal, A.K. Mathur

CASE NO.:

Appeal (civil) 3157 of 1998

PETITIONER:

E. T. Sunup

RESPONDENT:

C. A. N. S. S. Employees Assocn. & Anr.

DATE OF JUDGMENT: 13/10/2004

BENCH:

B.N. Agrawal & A.K. Mathur

JUDGMENT:

J U D G M E N T A.K. MATHUR, J.

This appeal is directed against the order passed by the Gauhati High Court dated 26th May, 1998 whereby the Division Bench has convicted Shri E. T. Sunup, Commissioner-cum-Secretary to Govt., Finance Department., Government of Nagaland, and sentenced him to undergo simple imprisonment of one month and also to pay a fine of Rs. 10,000/-, in default, further simple imprisonment of one month. However, Respondent No. 2, A.C.Saikia was impleaded as party in this Contempt Petition but he was not party in Civil Rule No. 40(K)96 against which this contempt arises, therefore, he was discharged. More so he stood retired on reaching superannuation some time in the month of June/July 1997.

The brief facts which are necessary for the disposal of the appeal are as follows. That by a W.T. Message dated 30th December, 1995 the State Government in the Department of Finance had stopped all payments of the employees of the State Government except salaries and pensions. The W.T. Message reads as under:

" NO. BUD/1-2/95-96 DTD 30.12.1995(.) STOP ALL STATES GOVT. PAYMENTS RPT STOP ALL STATE GOVT. PAYMENTS WITH LIMMEDIATE EFFECT UNTIL FURTHER ORDERS EXCEPT SALARIES AND PENSIONS FOR DECEMBER 1995 TO BE PAID FROM 5.1.96 RPT 5.1.96. ONWARDS (.) NO OTHER PAYMENT RPT NO OTHER PAYMENT SHALL BE ALLOWED EVEN AGAINST DRAWAL AUTHORITIES ALREADY ISSUED. UNTIL FURTHER ORDERS (.) PLEASE CONFIRM STRICT COMPLIANCE (.)"

The above message was amended on 30th January, 1996 and the ban imposed was relaxed with regard to payment of salaries to regular staff, pension, including arrear of pension, leave encashment and G.I.S. of the retired Government employees.

Earlier on 29th September, 1994 it was stated that no application for special relaxation of G.P.F. will be entertained. The message reads as under:

" NO. FIN/GEN/39/93 : DT. KMA THE 29th sept '94 (.) NO APPLICATION FOR SPECIAL RELAXATION OF G.P.F. WILL BE ENTERTAINED TILL FINANCIAL POSITION IMPROVES (.) REQUEST NOT TO FORWARD ANY APPLN. DURING OCT' 94. "

Thereafter the above orders were challenged by the Confederation of All Nagaland State Services Employees Association (in short CANSSEA). CANSSEA filed a Civil Rule 40(K)96 by its General Secretary. The grievance of the petitioner association was banning of withdrawal of G.P.F. While issuing a rule returnable within 6 weeks the Court on 17.5.96 after hearing both the parties, passed an interim order which reads as under:

"In the facts and circumstances of this case and in the light of submission made at the Bar I am of the view that an interim order has become necessary. Accordingly, the impugned order dated 30.12.95 issued by the Finance Department in so far as it concerns withdrawal of G.P.F. money shall remain suspended until further orders."

The interim order was not complied with by the respondent. Therefore, the CANSSA Association filed a contempt petition which came to be registered as Civil Original (Contempt) Petition No. 17(k)96 in which the present contemnor Shri E.T. Sunup, Finance Commissioner, Government of Nagaland, Kohima was arrayed as respondent No. 1 and a notice was issued and he filed a counter. Since the earlier Civil Rule was complete in all respect, therefore, both the Civil Rule and Contempt Petition were heard together and they were accordingly disposed of vide Court's Order dated 25.2.97 and the following directions were given:

"14. Having said enough, this petition is disposed with the following directions:-

(a) Second respondent is directed to lift the ban with regard to withdrawal/advance of G.P.F. within a week from the date of receipt of this order.

(b) The G.P.F. withdrawal/advance shall be allowed only after Submission of statements with regard to the availability of the amount in the credit of the subscriber.

) Every Treasury Officer shall, before honouring of withdrawal/advance of G.P.F. insist that latest statement showing the accounts in the credit of the subscriber are made available before him.

(d) The Accountant General shall see that the latest statements are issued correctly and on the basis of actual subscription subscribed by the subscriber.

(e) Every Head of the Department shall also see that before they forward the application of G.P. Fund withdrawal/advance, the latest statement indicating the availability of money in the credit of the subscriber is made available."

The Orders dated 30th September 1995, 30th January, 1996 and 29th September, 1994 were quashed, so far as the withdrawal and advance of GPF was concerned. The contempt petition was also disposed of and it was observed by the High Court under Para 4 of the aforesaid order that the contemnor has made a misleading statement in paragraph 3 of the counter because it has been categorically stated by the contemnor that impugned W.T. message dated 30.12.95 was effectively withdrawn. However the order of withdrawal of Ban imposed on 30th December, 1995 was not produced by the contemnor. While disposing of the contempt petition, the following observations were made by the Court.

" This Court has given seven days' time from the date of receipt of the order to the contemnors to lift the ban imposed on withdrawal/advance of G.P. Fund on 30.12.95. Contemnors also in paragraph 8 of its counter tender unqualified apology if there is some omission of commission which might have taken place in giving to the effective order of the Court. Contemnors also categorically averred that he has the highest respect for this Court and he has no intention of showing any disregard or disobedience to any order or direction passed by this Court. Whenever the direction of this Court is not carried out to its logical conclusion, it is the Rule of law that suffers. Carrying out the order of this Court is an enforcement of the Rule of Law. We, therefore, insist that our order should be carried out to enforce the Rule of Law. However, although the contempt has been made out, in view of the averment made in paragraph 8 of the counter by contemnors tendering unqualified apology, this Court with great hesitation accept the unqualified apology tendered by the contemnor keeping in view that the Court has already directed the contemnors to lift ban on withdrawal/advance of G.P. fund imposed on 30.12.95 and 29th September, 1994 passed in Civil Rule 40(K)96."

Despite the aforesaid order, it was not complied with and, therefore, a second contempt petition was filed which is the subject matter of the present Appeal.

It was submitted before the Court that despite leniency shown by the Court for withdrawing the order within one week, the respondent has deliberately and wilfully not abided by the order and flouted the same thereby bringing the administration of justice into disrespect. A reply was filed to this Contempt Petition and it was submitted that the copy of the order was not received by the respondent & therefore it could not be complied with & he denied that he had violated the order of the Court. It was submitted that meanwhile an appeal was filed and operation of order was stayed by the Division Bench. Therefore, no contempt was committed, however, an apology was also tendered for omission & commission if any. An issue with regard to receipt of the Certified copy of order was dealt with by the Court at length to show that certified copy was delivered in office of Finance Commission but it is irrelevant now because impugned order was stayed by the Division Bench of High Court on 28.5.1997. However, fact remains that no application was moved for extension of time given by Court i.e. one week.

Subsequently, the Writ Appeal was also disposed of by the Division Bench of the Gauhati High Court vide its order dated 11th March, 2004 and it was observed as under:

"In view of the discussion, we find no good reason to interfere with the order passed by the learned Single Judge and dismiss the appeal with an observation that whatever applications may be pending or moved for withdrawals by the subscribers/employees, they shall be dealt with in accordance with Rule applicable as contained in the General Provident Fund (Central Services) Rules, 1960. "

A statement was made before the Division Bench by the Advocate- General that he is authorized to make a statement that now no ban is there against withdrawal of amount by the employees from their Provident Fund accounts. However, the order of the Single Judge Bench was affirmed by Division Bench. The learned counsel for the appellant submitted that there was no ban in reality because provident fund amount was released from time to time, and in support of it he drew our attention to Annexure- 'G' showing GPF Receipts and Disbursements in the year 1996-97. Accordingly, total receipt towards GPF was Rs. 67.36 crore and disbursement was Rs. 25.29 crore. The amount of Rs. 25.29 crore was disbursed after the order passed by the learned Single Judge. However, learned counsel for appellant was unable to point out at the time of argument whether administrative order passed by authorities was revoked or not. But subsequently he filed an affidavit of Mr. E.T. Sunup, the then Finance Commissioner that Govt. now on 23.9.2004 has withdrawn the Order. The order reads as under:-

"In compliance to the Honourable Gauhati High Court orders dated 2.5.2.97 in Civil Rule 40(k)/96 and dated 11.3.99 in writ appeal No. 262/97, the following orders of the State Govt., given by the Finance Department, in so far relating to advances and withdrawals of G.P.F. by the State government employees, that were quashed by the Hon'ble Gauhati High Court, are hereby being revoked with immediate effect:

(i) NO. FIN/GEN/39/93 OF 29.9.1994

(ii) NO. BUS/1-2/95-96 OF 30.12.1995 AND

(iii) W/T message of 30.1.1996 (H. KHULU) IAS Finance Commissioner"

(But this administrative order was issued after close of arguments.) He also submitted that subsequently a similar ban was imposed and a contempt Petition 5/99 was filed in the Gauhati High Court and the Hon'ble Court on 14th March, 2000 set aside the impugned order & directed that whatever applications were pending or moved for withdrawal by the subscribers/employees be dealt with in accordance with Rules. The contempt petition was thereafter disposed of.

Learned Counsel submitted that on account of subsequent event now the ban does not survive and GPF is being disbursed and order has been withdrawn, appellant's apology be accepted and he be discharged. He submitted that appellant has put in long 30 years of service and he has never shown any disrespect to Court's order. Learned counsel for the respondent supported the order of the High Court.

We have heard both the learned counsel at length. We are of the opinion that the present order passed by the High Court in the facts and circumstances the case is fully justified. Once a stand was taken by the Advocate General that the ban does not survive and amount of GPF was disbursed during the period 1996-97, then there was no reason why the order banning of disbursement of GPF was not revoked. The stand taken by the State on one hand that amount of GPF was disbursed still they were not prepared to revoke the order, we fail to understand this inconsistent stand. Once the administrative order is issued then it cannot be revoked by oral submission before Court. It has to be revoked by another administrative order (which they have now passed). If the Adv. General had made a statement before the Court then it should have been followed with the administrative order revoking the ban. Till the date of argument learned counsel for the appellant could not produce before us the order revoking the ban, on the contrary the ban was kept in force and the second contempt petition was filed before the Court and the Advocate General again made a statement that GPF applications will be processed that makes the matter worse for the petitioner and it does not mitigate the situation. It is different that now a realization has dawned upon the authorities as they find no escape route for them, therefore, they have now revoked the order dated 25.2.1997 by the Order dated 23.9.2004 after close of arguments. It has become a tendency with the Government Officer to somehow or the other circumvent the orders of Court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the court's order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the Court cannot be subservient to the administrative fait. The executive & legislature has to work within Constitutional framework and the judiciary has been given a role of watch dog to keep the legislature & executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of Court's Order

and appellant is guilty of flouting the Courts Order.

In the facts and circumstances of the case, the view taken by the High Court does not call for interference..

While coming to the question of sentence, learned counsel for the appellant submitted that the incumbent is on the verge of retirement and he has suffered a lot and he has an unblemished career of 30 years of service. More so now Order dated 25.2.1997 has been revoked though belated therefore a mercy be shown to him and his apology may be accepted. But if the Court's orders are flouted like this, then people will loose faith in the Courts. Therefore, it is necessary to deal with such type of violation of Court's Order with strong hands and to convey to the authorities that the Courts are not going to take things lightly. However, looking to the long career of this Officer and now order has been revoked, we do not propose to punish him with imprisonment but we propose to impose a fine of Rs. 5,000/- (Rupees five thousand) only and in default of payment of fine, to undergo a simple imprisonment for one month. The incumbent shall deposit the amount in the State Treasury within one month from today.

Hence, as a result we affirm the order of the High Court and punish the respondent No. 1 for committing contempt of Courts Order and impose a fine of Rs. 5,000/- (Rupees five thousand) only, in default of payment of fine, sentence him simple imprisonment for one month. The impugned order is modified to this extant. The Civil Appeal is disposed of accordingly.